

OVERSEE VISA INTEGRITY WITH STAKEHOLDER  
ADVISORIES ACT

JUNE 10, 2016.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 3636]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3636) to amend the Immigration and Nationality Act to allow labor organizations and management organizations to receive the results of visa petitions about which such organizations have submitted advisory opinions, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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## The Amendments

The amendments are as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Oversee Visa Integrity with Stakeholder Advisories Act” or the “O-VISA Act”.

### SEC. 2. ALLOWING CERTAIN ORGANIZATIONS TO RECEIVE THE RESULTS OF VISA PETITIONS.

Section 214(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(3)) is amended—

- (1) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; and
- (2) in the first sentence of the matter following subparagraph (B)—
  - (A) by striking “and (iv)” and inserting “(iv)”; and
  - (B) by striking the period at the end and inserting the following: “, and (v) upon making the decision, the Secretary of Homeland Security shall provide a copy of the decision to each organization with which the Secretary consulted under subparagraph (A) or (B).”.

Amend the title so as to read:

A bill to amend the Immigration and Nationality Act to allow labor organizations and management organizations to receive the results of visa petitions about which such organizations have submitted advisory opinions.

## Purpose and Summary

H.R. 3636 ensures that labor organizations and management organizations receive the results of petitions for O nonimmigrant status (for aliens with extraordinary abilities in the sciences, arts, education, business, or athletics and those accompanying and assisting in the aliens’ artistic or athletic performances in the United States) about which such organizations submitted advisory opinions to U.S. Citizenship and Immigration Services.

## Background and Need for the Legislation

### O VISAS

[An O-1 visa is a temporary visa for an alien who] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability. . . .<sup>1</sup>

An O-2 visa is a temporary visa for an alien who:

- (I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an [O-1] alien who is admitted . . . for a specific event or events,
- (II) is an integral part of such actual performance, [and]
- (III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or

<sup>1</sup> Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (INA).

(b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production. . . .<sup>2</sup>

U.S. Citizenship and Immigration Services' (USCIS) approval rate in fiscal year 2013 for O-1 petitions was 96% and for O-2 petitions was 98%.<sup>3</sup>

#### CONSULTATIONS

Employers and other petitioners seeking O visas for aliens must<sup>4</sup> meet a "consultation" requirement designed to protect American workers by ensuring that truly extraordinary aliens are able to receive O-1 visas.<sup>5</sup> In general, petitioners filing O-1 petitions must include a written<sup>6</sup> "advisory opinion from a peer group"<sup>7</sup> (or other person or persons of its choosing, which may include a labor organization) with expertise in the specific field involved."<sup>8</sup> O-2 petitions must be filed with "an advisory opinion from a labor organization with expertise in the skill area involved."<sup>9</sup> With respect to aliens seeking entry for motion picture or television productions, consultation must be with "the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. . . ."<sup>10</sup>

The INA provides that in the case of an alien seeking entry for a motion picture or television production "any opinion . . . shall only be advisory . . . any such opinion that recommends denial must be in writing . . . in making the decision the [Secretary of Homeland Security] shall consider the exigencies and scheduling of the production, and [the Secretary of Homeland Security] shall append to the decision any such opinion."<sup>11</sup>

USCIS regulations provide that:

[For O-1 visas, i]f the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, it should describe the alien's ability and

<sup>2</sup>Section 101(a)(15)(O)(ii) of the INA.

<sup>3</sup>See USCIS, U.S. Department of Homeland Security (DHS), *USCIS Responses to Questions from Chairman Goodlatte and Ranking Member Conyers* at 1 (July 23, 2014).

<sup>4</sup>See 8 C.F.R. sec. 214.2(o)(5)(i).

<sup>5</sup>See section 214(c)(3) & (6) of the INA.

<sup>6</sup>See 8 C.F.R. sec. 214.2(o)(5)(i)(B).

<sup>7</sup>"Peer group means a group or organization which is comprised of practitioners of the alien's occupation. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation." 8 C.F.R. sec. 214.2(o)(3)(ii).

<sup>8</sup>Section 214(c)(6)(A)(i) of the INA.

<sup>9</sup>Section 214(c)(6)(A)(ii) of the INA.

<sup>10</sup>Section 214(c)(3)(A) of the INA (for O-1 visas, with similar standards for O-2 visas (see section 214(c)(3)(B) of the INA).

<sup>11</sup>Section 214(c)(3) of the INA (The consultation requirement is waived "in the case of aliens who have been admitted as [O-1 nonimmigrants] because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation. . . .").

achievements in the field of endeavor, describe the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition. . . .

In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

Consultation with a labor organization with expertise in the skill area involved is required for an O-2 alien accompanying an O-1 alien of extraordinary ability. In the case of an O-2 alien seeking entry for a motion picture or television production, consultation with a labor organization and a management organization in the area of the alien's ability is required. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the opinion provided by the labor and/or management organization should describe the alien's essentiality to, and working relationship with, the O-1 artist or athlete and state whether there are available U.S. workers who can perform the support services. If the alien will accompany an O-1 alien involved in a motion picture or television production, the advisory opinion should address the alien's skills and experience with the O-1 alien and whether the alien has a pre-existing longstanding working relationship with the O-1 alien, or whether significant production will take place in the United States and abroad and if the continuing participation of the alien is essential to the successful completion of the production. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.<sup>12</sup>

In addition, USCIS regulations provide that "[i]n those cases where it is established by the petitioner that an appropriate peer

<sup>12</sup> 8 C.F.R. sec. 214.2(o)(5)(ii)(A), (iii), (iv).

group, including a labor organization, does not exist, the Service shall render a decision on the evidence of record.”<sup>13</sup>

USCIS has noted to the Committee that:

[T]he consultations are only one piece of evidence reviewed in the totality of all the information provided during the course of an adjudication . . . [U]nder the preponderance of evidence standard, a petition with a negative consultation could still be approved if the totality of the evidence established that, more likely than not, the beneficiary was eligible for the benefit sought. Likewise, a positive consultation may not necessarily lead to approval of the petition if the totality of the evidence established that, more likely than not, the beneficiary was not eligible for the benefit sought.”<sup>14</sup>

As to how many of these petitions were objected to by an organization providing an advisory opinion and how many were approved despite such objections, USCIS indicated that “[o]ur database does not capture the information requested.”<sup>15</sup>

USCIS does not provide notice as to the outcome of adjudications to the organizations that provide advisory opinions. It believes that “[s]ince the petitions are contained with a system of records under the Privacy Act, 5 USC 552a, USCIS is prohibited from sharing information regarding the results of an adjudication to third parties absent a release from the petitioner.”<sup>16</sup>

The Directors Guild of America (DGA) is “the organization charged with providing O-1 and O-2 advisory opinions on behalf of directors, assistant directors, associate directors, unit production managers, stage managers and production assistants.”<sup>17</sup> The DGA has raised concerns regarding “[p]etitioners who, upon receipt of an objection from one labor organization, seek a consultation letter from a different organization [or] remove or revise the evidence in their petition to omit the basis for DGA’s objection before submitting the petition to USCIS [or] petitioners who physically alter DGA letters to change their content [or] draft fabricated letters and forge DGA signatures. . . .”<sup>18</sup>

#### H.R. 3636

H.R. 3636 provides that upon making the decision as to whether to approve an O visa petition regarding motion picture and television productions, “the Secretary of Homeland Security shall provide a copy of the decision to the organizations consulted with. . . .”

### Hearings

The Committee on the Judiciary held no hearings on H.R. 3636.

<sup>13</sup> 8 C.F.R. sec. 214.2(o)(5)(i)(G).

<sup>14</sup> *USCIS Responses to Questions from Chairman Goodlatte and Ranking Member Conyers at 3.*

<sup>15</sup> *Id.* at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Letter from Matthew Bowers, Assistant General Counsel, DGA, to Mallory Hurteau, USCIS, DHS at 1 (Feb. 22, 2013).

<sup>18</sup> DGA, *Abuse of “O” Visa Program Jeopardizes Jobs in the Motion Picture Industry.*

### **Committee Consideration**

On May 25, 2016, the Committee met in open session and ordered the bill H.R. 3636 favorably reported, with an amendment, by voice vote, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 3636.

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### **New Budget Authority and Tax Expenditures**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

### **Congressional Budget Office Cost Estimate**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3636, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 9, 2016.*

Hon. BOB GOODLATTE, CHAIRMAN,  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3636, the "Oversee Visa Integrity with Stakeholder Advisories Act."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

KEITH HALL,  
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

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**H.R. 3636—Oversee Visa Integrity with Stakeholder  
Advisories Act.**

As ordered reported by the House Committee on the Judiciary  
on May 25, 2016.

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Foreign people with records of extraordinary achievement in motion pictures or television productions may apply for visas (known as “O” visas) for temporary admission to the United States. In evaluating petitions for these people and their associates, the Department of Homeland Security (DHS) must consult with certain labor organizations before rendering a decision. H.R. 3636 would require DHS to provide a copy of the decision to each such organization that it consulted.

Based on information from DHS, CBO estimates that enacting H.R. 3636 would have no significant cost to the Federal Government. Any such costs would be paid from fees collected by DHS and would be considered direct spending, so pay-as-you-go procedures would apply to the bill. The legislation would not affect revenues. CBO estimates that enacting H.R. 3636 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 3636 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

**Duplication of Federal Programs**

No provision of H.R. 3636 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

**Disclosure of Directed Rule Makings**

The Committee estimates that H.R. 3636 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

**Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3636 allows labor organizations and management organizations to receive the results of petitions for O nonimmigrant status (for aliens with extraordinary abilities in the sciences, arts, education, business, or athletics and those accompanying and assisting in the aliens’ artistic or athletic performances in the United States) about which such organizations submitted advisory opinions to USCIS.

### Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3636 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

### Section-by-Section Analysis

*Section 1. Short title.* Section 1 sets forth the short title of the bill as the “Oversee Visa Integrity with Stakeholder Advisories Act” or the “O-VISA Act”.

*Section 2. Allowing certain organizations to receive the results of visa petitions.* Section 2 amends section 214(c)(3) of the Immigration and Nationality Act (8 U.S.C. § 1184(c) (3)). It strikes “Attorney General” each place it appears and inserts “Secretary of Homeland Security.” It requires that “upon making the decision [to approve or deny an O visa petition], the Secretary of Homeland Security shall provide a copy of the decision to each organization with which the Secretary consulted” pursuant to subparagraphs (A) or (B) [of section 214(c)(3)].

### Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

## IMMIGRATION AND NATIONALITY ACT

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### TITLE II—IMMIGRATION

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#### CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

\* \* \* \* \*

#### ADMISSION OF NONIMMIGRANTS

SEC. 214. (a)(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. No alien admitted to Guam or the Commonwealth of the Northern Mariana Islands without a visa pursuant to section 212(l) may be



authorized to enter or stay in the United States other than in Guam or the Commonwealth of the Northern Mariana Islands or to remain in Guam or the Commonwealth of the Northern Mariana Islands for a period exceeding 45 days from date of admission to Guam or the Commonwealth of the Northern Mariana Islands. No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

(2)(A) The period of authorized status as a nonimmigrant described in section 101(a)(15)(O) shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

(B) The period of authorized status as a nonimmigrant described in section 101(a)(15)(P) shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under section 101(a)(15)(P), the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

(b) Every alien (other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

(c)(1) The question of importing any alien as a nonimmigrant under subparagraph (H), (L), (O), or (P)(i) of section 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1)) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).

(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 101(a)(15)(L) instead of filing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for admission of aliens covered under such a petition.

(B) For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) within 30 days after the date a completed petition has been filed.

(D) The period of authorized admission for—

(i) a nonimmigrant admitted to render services in a managerial or executive capacity under section 101(a)(15)(L) shall not exceed 7 years, or

(ii) a nonimmigrant admitted to render services in a capacity that involves specialized knowledge under section 101(a)(15)(L) shall not exceed 5 years.

(E) In the case of an alien spouse admitted under section 101(a)(15)(L), who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an “employment authorized” endorsement or other appropriate work permit.

(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—

(i) the alien will be controlled and supervised principally by such unaffiliated employer; or

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

(3) The **Attorney General** *Secretary of Homeland Security* shall approve a petition—In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the **Attorney General** *Secretary of Homeland Security* shall consider the exigencies and scheduling of the production, and (iv) (iv) the **Attorney General** *Secretary of Homeland Security* shall append to the decision any such opinion. The **Attorney General** *Secretary of Homeland Security* shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in

the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the **【Attorney General】** *Secretary of Homeland Security* shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

(A) with respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation in accordance with paragraph (6) or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or

(B) with respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the **【Attorney General】** *Secretary of Homeland Security* shall consider the exigencies and scheduling of the production, **【and (iv)】** (iv) the **【Attorney General】** *Secretary of Homeland Security* shall append to the decision any such opinion~~【.】~~, and (v) upon making the decision, the *Secretary of Homeland Security* shall provide a copy of the decision to each organization with which the Secretary consulted under subparagraph (A) or (B). The **【Attorney General】** *Secretary of Homeland Security* shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the **【Attorney General】** *Secretary of Homeland Security* shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

(4)(A) For purposes of section 101(a)(15)(P)(i)(a), an alien is described in this subparagraph if the alien—

(i)(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;

(II) is a professional athlete, as defined in section 204(i)(2);

(III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if—

(aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant foreign country;

(bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and

(cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or

(IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production; and

(ii) seeks to enter the United States temporarily and solely for the purpose of performing—

(I) as such an athlete with respect to a specific athletic competition; or

(II) in the case of an individual described in clause (i)(IV), in a specific theatrical ice skating production or tour.

(B)(i) For purposes of section 101(a)(15)(P)(i)(b), an alien is described in this subparagraph if the alien—

(I) performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,

(II) in the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial relationship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and

(III) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

(ii) In the case of an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time, the Attorney General may, in consideration of special circumstances, waive the international recognition requirement of clause (i)(I).

(iii)(I) The one-year relationship requirement of clause (i)(II) shall not apply to 25 percent of the performers and entertainers in a group.

(II) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

(iv) The requirements of subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performance of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(C) A person may petition the Attorney General for classification of an alien as a nonimmigrant under section 101(a)(15)(P).

(D) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 101(a)(15)(P) only after consultation in accordance with paragraph (6).

(E) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 101(a)(15)(P)(ii) only after consultation with labor organizations representing artists and entertainers in the United States.

(F)(i) No nonimmigrant visa under section 101(a)(15)(P)(i)(a) shall be issued to any alien who is a national of a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety, national security, or national interest of the United States. In making a determination under this subparagraph, the Secretary of State shall apply standards developed by the Secretary of State, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that are applicable to the nationals of such states.

(ii) In this subparagraph, the term “state sponsor of international terrorism” means any country the government of which has been determined by the Secretary of State under any of the laws specified in clause (iii) to have repeatedly provided support for acts of international terrorism.

(iii) The laws specified in this clause are the following:

(I) Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) (or successor statute).

(II) Section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

(III) Section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)).

(G) The Secretary of Homeland Security shall permit a petition under this subsection to seek classification of more than 1 alien as a nonimmigrant under section 101(a)(15)(P)(i)(a).

(H) The Secretary of Homeland Security shall permit an athlete, or the employer of an athlete, to seek admission to the United States for such athlete under a provision of this Act other than section 101(a)(15)(P)(i) if the athlete is eligible under such other provision.

(5)(A) In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

(B) In the case of an alien who is admitted to the United States in nonimmigrant status under section 101(a)(15)(O) or 101(a)(15)(P) and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. The petitioner shall pro-

vide assurance satisfactory to the Attorney General that the reasonable cost of that transportation will be provided.

(6)(A)(i) To meet the consultation requirement of paragraph (3)(A) in the case of a petition for a nonimmigrant described in section 101(a)(15)(O)(i) (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a peer group (or other person or persons of its choosing, which may include a labor organization) with expertise in the specific field involved.

(ii) To meet the consultation requirement of paragraph (3)(B) in the case of a petition for a nonimmigrant described in section 101(a)(15)(O)(ii) (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the skill area involved.

(iii) To meet the consultation requirement of paragraph (4)(D) in the case of a petition for a nonimmigrant described in section 101(a)(15)(P)(i) or 101(a)(15)(P)(iii), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment involved.

(B) To meet the consultation requirements of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization.

(C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion.

(D) Any person or organization receiving a copy of a petition described in subparagraph (A) and supporting documents shall have no more than 15 days following the date of receipt of such documents within which to submit a written advisory opinion or comment or to provide a letter of no objection. Once the 15-day period has expired and the petitioner has had an opportunity, where appropriate, to supply rebuttal evidence, the Attorney General shall adjudicate such petition in no more than 14 days. The Attorney General may shorten any specified time period for emergency reasons if no unreasonable burden would be thus imposed on any participant in the process.

(E)(i) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant artists or entertainers described in section 101(a)(15)(O) or 101(a)(15)(P) to accommodate the exigencies and scheduling of a given production or event.

(ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 101(a)(15)(O)(i) or 101(a)(15)(P)(i) in the case of emergency circumstances (including trades during a season).

(F) No consultation required under this subsection by the Attorney General with a nongovernmental entity shall be construed as permitting the Attorney General to delegate any authority under this subsection to such an entity. The Attorney General shall give such weight to advisory opinions provided under this section as the Attorney General determines, in his sole discretion, to be appropriate.

(7) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(8) The Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing, with respect to petitions under each subcategory of subparagraphs (H), (O), (P), and (Q) of section 101(a)(15) the following:

(A) The number of such petitions which have been filed.

(B) The number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions.

(C) The number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions.

(D) The number of such petitions which have been withdrawn.

(E) The number of such petitions which are awaiting final action.

(9)(A) The Attorney General shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a), a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b);

(ii) to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien); or

(iii) to obtain authorization for an alien having such status to change employers.

(B) The amount of the fee shall be \$1,500 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).

(10) An amended H-1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer

and where the terms and conditions of employment remain the same but for the identity of the petitioner.

(11)(A) Subject to subparagraph (B), the Secretary of Homeland Security or the Secretary of State, as appropriate, shall impose a fee on an employer who has filed an attestation described in section 212(t)—

(i) in order that an alien may be initially granted nonimmigrant status described in section 101(a)(15)(H)(i)(b1); or

(ii) in order to satisfy the requirement of the second sentence of subsection (g)(8)(C) for an alien having such status to obtain certain extensions of stay.

(B) The amount of the fee shall be the same as the amount imposed by the Secretary of Homeland Security under paragraph (9), except that if such paragraph does not authorize such Secretary to impose any fee, no fee shall be imposed under this paragraph.

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).

(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in subparagraph (H)(i)(b) or (L) of section 101(a)(15); or

(ii) to obtain authorization for an alien having such status to change employers.

(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section 101(a)(15)(L), if the alien is covered under a blanket petition described in paragraph (2)(A).

(C) The amount of the fee imposed under subparagraph (A) or (B) shall be \$500.

(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

(E) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(v).

(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 101(a)(15)(H)(ii)(b).

(B) The amount of the fee imposed under subparagraph (A) shall be \$150.

(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 101(a)(15)(H)(ii)(b) or a willful misrepresentation of a material fact in such petition—

(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed \$10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and



(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 204 or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

(B) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

(C) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

(D) In this paragraph, the term “substantial failure” means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.

(d)(1) A visa shall not be issued under the provisions of section 101(a)(15)(K)(i) until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime described in paragraph (3)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in paragraph (3)(B)(i). It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien’s arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed in accordance with sections 240 and 241.

(2)(A) Subject to subparagraphs (B) and (C), the Secretary of Homeland Security may not approve a petition under paragraph (1) unless the Secretary has verified that—

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary’s discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

(C)(i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that—

- (I) the petitioner was acting in self-defense;
- (II) the petitioner was found to have violated a protection order intended to protect the petitioner; or
- (III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary.

(3) In this subsection:

(A) The terms “domestic violence”, “sexual assault”, “child abuse and neglect”, “dating violence”, “elder abuse”, and “stalking” have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(B) The term “specified crime” means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

(e)(1) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States–Canada Free–Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.

(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as “NAFTA”) to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose

under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15). The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term “citizen of Mexico” means “citizen” as defined in Annex 1608 of NAFTA.

(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit—

(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and

(B) shall cease to apply as provided for in paragraph 3 of such Appendix.

(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if—

(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

(i) the action proposed to be taken and the reasons therefor, and

(ii) the advice obtained under subparagraph (A);

(C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and (B) with respect to such action has expired; and

(D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).

(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m), in the case of a registered nurse, or the application requirement of section 212(n), in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c), to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(m) and 212(n), and the Attorney General, with respect to subsection (c).

(6) In the case of an alien spouse admitted under section 101(a)(15)(E), who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an “employment authorized” endorsement or other appropriate work permit.

(f)(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 101(a)(15)(D) if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 2101(46) of title 46, United States Code) or on an aircraft of an air carrier (as defined in section 40102(a)(2) of title 49, United States Code) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

(2) An alien described in paragraph (1)—

(A) may not be paroled into the United States pursuant to section 212(d)(5) unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and

(B) shall be considered not to be a bona fide crewman for purposes of section 252(b).

(3) Paragraph (1) shall not apply to an alien if the air carrier or owner or operator of such vessel that employs the alien provides documentation that satisfies the Attorney General that the alien—

(A) has been an employee of such employer for a period of not less than 1 year preceding the date that a strike or lawful lockout commenced;

(B) has served as a qualified crewman for such employer at least once in each of 3 months during the 12-month period preceding such date; and

(C) shall continue to provide the same services that such alien provided as such a crewman.

(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 101(a)(15)(H)(i)(b), may not exceed—

(i) 65,000 in each fiscal year before fiscal year 1999;

(ii) 115,000 in fiscal year 1999;

(iii) 115,000 in fiscal year 2000;

(iv) 195,000 in fiscal year 2001;

(v) 195,000 in fiscal year 2002;

(vi) 195,000 in fiscal year 2003; and

(vii) 65,000 in each succeeding fiscal year; or

(B) under section 101(a)(15)(H)(ii)(b) may not exceed 66,000.

(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status. If an alien who was issued a visa or otherwise provided nonimmigrant status and counted against the numerical limitations of paragraph (1) is found to have been issued such visa or otherwise provided such status by fraud or willfully misrepresenting a material fact and such visa or nonimmigrant status is revoked, then one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under the numerical limitations of paragraph (1) in the fiscal year in which the petition is revoked, regardless of the fiscal year in which the petition was approved.

(4) In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years.

(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who—

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity;

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

(C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

(6) Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed as a nonimmigrant alien described in section 101(a)(15)(H)(i)(b), who has not previously been counted toward the numerical limitations contained in paragraph (1)(A), be counted toward those limitations the first time the alien is employed by an employer other than one described in paragraph (5).

(7) Any alien who has already been counted, within the 6 years prior to the approval of a petition described in subsection (c), toward the numerical limitations of paragraph (1)(A) shall not again be counted toward those limitations unless the alien would be eligible for a full 6 years of authorized admission at the time the petition is filed. Where multiple petitions are approved for 1 alien, that alien shall be counted only once.

(8)(A) The agreements referred to in section 101(a)(15)(H)(i)(b1) are—

(i) the United States-Chile Free Trade Agreement; and

(ii) the United States-Singapore Free Trade Agreement.

(B)(i) The Secretary of Homeland Security shall establish annual numerical limitations on approvals of initial applications by aliens for admission under section 101(a)(15)(H)(i)(b1).

(ii) The annual numerical limitations described in clause (i) shall not exceed—

(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

(iii) The annual numerical limitations described in clause (i) shall only apply to principal aliens and not to the spouses or children of such aliens.

(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall ad-

just upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 101(a)(15)(H)(i)(b) may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(C) The period of authorized admission as a nonimmigrant under section 101(a)(15)(H)(i)(b1) shall be 1 year, and may be extended, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) for the purpose of permitting the nonimmigrant to obtain such extension.

(D) The numerical limitation described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien granted an extension under subparagraph (C) during such year who has obtained 5 or more consecutive prior extensions.

(9)(A) Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2013, 2014, or 2015 shall not again be counted toward such limitation during fiscal year 2016. Such an alien shall be considered a returning worker.

(B) A petition to admit or otherwise provide status under section 101(a)(15)(H)(ii)(b) shall include, with respect to a returning worker—

- (i) all information and evidence that the Secretary of Homeland Security determines is required to support a petition for status under section 101(a)(15)(H)(ii)(b);
- (ii) the full name of the alien; and
- (iii) a certification to the Department of Homeland Security that the alien is a returning worker.

(C) An H-2B visa or grant of nonimmigrant status for a returning worker shall be approved only if the alien is confirmed to be a returning worker by—

- (i) the Department of State; or
- (ii) if the alien is visa exempt or seeking to change to status under section 101 (a)(15)(H)(ii)(b), the Department of Homeland Security.

(10) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens subject to such numerical limits who enter the United States pursuant to a visa or are accorded nonimmigrant status under section 101(a)(15)(H)(ii)(b) during the first 6 months of such fiscal year is not more than 33,000.

(11)(A) The Secretary of State may not approve a number of initial applications submitted for aliens described in section 101(a)(15)(E)(iii) that is more than the applicable numerical limitation set out in this paragraph.

(B) The applicable numerical limitation referred to in subparagraph (A) is 10,500 for each fiscal year.

(C) The applicable numerical limitation referred to in subparagraph (A) shall only apply to principal aliens and not to the spouses or children of such aliens.

(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i)(b) or (c), (L), or (V) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

(i)(1) Except as provided in paragraph (3), for purposes of section 101(a)(15)(H)(i)(b), section 101(a)(15)(E)(iii), and paragraph (2), the term "specialty occupation" means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 101(a)(15)(H)(i)(b), the requirements of this paragraph, with respect to a specialty occupation, are—

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

(3) For purposes of section 101(a)(15)(H)(i)(b1), the term "specialty occupation" means an occupation that requires—

(A) theoretical and practical application of a body of specialized knowledge; and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(j)(1) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this paragraph, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.

(2) Notwithstanding any other provision of this Act except section 212(t)(1), and subject to regulations promulgated by the Sec-

Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A), and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 101(a)(15) if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

(k)(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(i) in any fiscal year may not exceed 200. The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(ii) in any fiscal year may not exceed 50.

(2) The period of admission of an alien as such a nonimmigrant may not exceed 3 years. Such period may not be extended by the Attorney General.

(3) As a condition for the admission, and continued stay in lawful status, of such a nonimmigrant, the nonimmigrant—

(A) shall report not less often than quarterly to the Attorney General such information concerning the alien's whereabouts and activities as the Attorney General may require;

(B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission;

(C) must have executed a form that waives the nonimmigrant's right to contest, other than on the basis of an application for withholding of removal, any action for removal of the alien instituted before the alien obtains lawful permanent resident status; and

(D) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.

(4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning—

(A) the number of such nonimmigrants admitted;

(B) the number of successful criminal prosecutions or investigations resulting from cooperation of such aliens;

(C) the number of terrorist acts prevented or frustrated resulting from cooperation of such aliens;

(D) the number of such nonimmigrants whose admission or cooperation has not resulted in successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and

(E) the number of such nonimmigrants who have failed to report quarterly (as required under paragraph (3)) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

(l)(1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year for-



eign residence requirement under section 212(e) on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—

(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

(B) in the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 30;

(C) in the case of a request by an interested Federal agency or by an interested State agency—

(i) the alien demonstrates a bona fide offer of full-time employment at a health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and

(ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment at a health facility or health care organization for the remainder of such 3-year period); and

(D) in the case of a request by an interested Federal agency (other than a request by an interested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice primary care or specialty medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that—

(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 10; and

(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a fa-

cility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.

(2)(A) Notwithstanding section 248(a)(2), the Attorney General may change the status of an alien who qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b). The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of the contract with the health facility or health care organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status, until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least 2 years following departure from the United States.

(3) Notwithstanding any other provision of this subsection, the 2-year foreign residence requirement under section 212(e) shall apply with respect to an alien described in clause (iii) of such section, who has not otherwise been accorded status under section 101(a)(27)(H), if—

(A) at any time the alien ceases to comply with any agreement entered into under subparagraph (C) or (D) of paragraph (1); or

(B) the alien's employment ceases to benefit the public interest at any time during the 3-year period described in paragraph (1)(C).

(m)(1) An alien may not be accorded status as a nonimmigrant under clause (i) or (iii) of section 101(a)(15)(F) in order to pursue a course of study—

(A) at a public elementary school or in a publicly funded adult education program; or

(B) at a public secondary school unless—

(i) the aggregate period of such status at such a school does not exceed 12 months with respect to any alien, and  
(ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at such school for the period of the alien's attendance.

(2) An alien who obtains the status of a nonimmigrant under clause (i) or (iii) of section 101(a)(15)(F) in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 101(a)(15)(F) shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of

study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

(n)(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) is authorized to accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(2) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

(A) who has been lawfully admitted into the United States;

(B) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Attorney General; and

(C) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.

(o)(1) No alien shall be eligible for admission to the United States under section 101(a)(15)(T) if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000).

(2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 101(a)(15)(T) may not exceed 5,000.

(3) The numerical limitation of paragraph (2) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(T)(i), and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(T)(ii), if the alien attains 21 years of age after such parent's application was filed but while it was pending.

(5) An alien described in clause (i) of section 101(a)(15)(T) shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

(6) In making a determination under section 101(a)(15)(T)(i)(III)(aa) with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000) appear to have been involved, shall be considered.

(7)(A) Except as provided in subparagraph (B), an alien who is issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(T) may be granted such status for a period of not more than 4 years.

(B) An alien who is issued a visa or otherwise provided non-immigrant status under section 101(a)(15)(T) may extend the period of such status beyond the period described in subparagraph (A) if—

(i) a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking or certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity;

(ii) the alien is eligible for relief under section 245(l) and is unable to obtain such relief because regulations have not been issued to implement such section; or

(iii) the Secretary of Homeland Security determines that an extension of the period of such nonimmigrant status is warranted due to exceptional circumstances.

(C) Nonimmigrant status under section 101(a)(15)(T) shall be extended during the pendency of an application for adjustment of status under section 245(l).

(p) REQUIREMENTS APPLICABLE TO SECTION 101(a)(15)(U) VISAS.—

(1) PETITIONING PROCEDURES FOR SECTION 101(a)(15)(U) VISAS.—The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

(2) NUMERICAL LIMITATIONS.—

(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 101(a)(15)(U) in any fiscal year shall not exceed 10,000.

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 101(a)(15)(U)(i), and not to spouses, children, or, in the case of alien children, the alien parents of such children.

(3) DUTIES OF THE ATTORNEY GENERAL WITH RESPECT TO “U” VISA NONIMMIGRANTS.—With respect to nonimmigrant aliens described in subsection (a)(15)(U)—

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

(B) the Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.

(4) CREDIBLE EVIDENCE CONSIDERED.—In acting on any petition filed under this subsection, the consular officer or the At-

torney General, as appropriate, shall consider any credible evidence relevant to the petition.

(5) NONEXCLUSIVE RELIEF.—Nothing in this subsection limits the ability of aliens who qualify for status under section 101(a)(15)(U) to seek any other immigration benefit or status for which the alien may be eligible.

(6) DURATION OF STATUS.—The authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii) that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 245(m). The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).

(7) AGE DETERMINATIONS.—

(A) CHILDREN.—An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(U)(i), and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii), if the alien attains 21 years of age after such parent's petition was filed but while it was pending.

(B) PRINCIPAL ALIENS.—An alien described in clause (i) of section 101(a)(15)(U) shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

(q)(1) In the case of a nonimmigrant described in section 101(a)(15)(V)—

(A) the Attorney General shall authorize the alien to engage in employment in the United States during the period of authorized admission and shall provide the alien with an "employment authorized" endorsement or other appropriate document signifying authorization of employment; and

(B) the period of authorized admission as such a nonimmigrant shall terminate 30 days after the date on which any of the following is denied:

(i) The petition filed under section 204 to accord the alien a status under section 203(a)(2)(A) (or, in the case of

a child granted nonimmigrant status based on eligibility to receive a visa under section 203(d), the petition filed to accord the child's parent a status under section 203(a)(2)(A)).

(ii) The alien's application for an immigrant visa pursuant to the approval of such petition.

(iii) The alien's application for adjustment of status under section 245 pursuant to the approval of such petition.

(2) In determining whether an alien is eligible to be admitted to the United States as a nonimmigrant under section 101(a)(15)(V), the grounds for inadmissibility specified in section 212(a)(9)(B) shall not apply.

(3) The status of an alien physically present in the United States may be adjusted by the Attorney General, in the discretion of the Attorney General and under such regulations as the Attorney General may prescribe, to that of a nonimmigrant under section 101(a)(15)(V), if the alien—

(A) applies for such adjustment;

(B) satisfies the requirements of such section; and

(C) is eligible to be admitted to the United States, except in determining such admissibility, the grounds for inadmissibility specified in paragraphs (6)(A), (7), and (9)(B) of section 212(a) shall not apply.

(r)(1) A visa shall not be issued under the provisions of section 101(a)(15)(K)(ii) until the consular officer has received a petition filed in the United States by the spouse of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime described in paragraph (5)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in subsection (5)(B)(i).

(2) In the case of an alien seeking admission under section 101(a)(15)(K)(ii) who concluded a marriage with a citizen of the United States outside the United States, the alien shall be considered inadmissible under section 212(a)(7)(B) if the alien is not at the time of application for admission in possession of a valid nonimmigrant visa issued by a consular officer in the foreign state in which the marriage was concluded.

(3) In the case of a nonimmigrant described in section 101(a)(15)(K)(ii), and any child of such a nonimmigrant who was admitted as accompanying, or following to join, such a nonimmigrant, the period of authorized admission shall terminate 30 days after the date on which any of the following is denied:

(A) The petition filed under section 204 to accord the principal alien status under section 201(b)(2)(A)(i).

(B) The principal alien's application for an immigrant visa pursuant to the approval of such petition.

(C) The principal alien's application for adjustment of status under section 245 pursuant to the approval of such petition.

(4)(A) The Secretary of Homeland Security shall create a database for the purpose of tracking multiple visa petitions filed for fiancé(e)s and spouses under clauses (i) and (ii) of section

101(a)(15)(K). Upon approval of a second visa petition under section 101(a)(15)(K) for a fiancé(e) or spouse filed by the same United States citizen petitioner, the petitioner shall be notified by the Secretary that information concerning the petitioner has been entered into the multiple visa petition tracking database. All subsequent fiancé(e) or spouse nonimmigrant visa petitions filed by that petitioner under such section shall be entered in the database.

(B)(i) Once a petitioner has had two fiancé(e) or spousal petitions approved under clause (i) or (ii) of section 101(a)(15)(K), if a subsequent petition is filed under such section less than 10 years after the date the first visa petition was filed under such section, the Secretary of Homeland Security shall notify both the petitioner and beneficiary of any such subsequent petition about the number of previously approved fiancé(e) or spousal petitions listed in the database.

(ii) To notify the beneficiary as required by clause (i), the Secretary of Homeland Security shall provide such notice to the Secretary of State for inclusion in the mailing to the beneficiary described in section 833(a)(5)(A)(i) of the International Marriage Broker Regulation Act of 2005 (8 U.S.C. 1375a(a)(5)(A)(i)).

(5) In this subsection:

(A) The terms “domestic violence”, “sexual assault”, “child abuse and neglect”, “dating violence”, “elder abuse”, and “stalking” have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(B) The term “specified crime” means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

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